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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,949	03/07/2002	Rainer Tilse	4597-039	2820

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LADAS & PARRY LLP
224 SOUTH MICHIGAN AVENUE
SUITE 1200
CHICAGO, IL 60604

EXAMINER

WILSON, JOHN J

ART UNIT PAPER NUMBER

3732

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/069,949	TILSE, RAINER	
	Examiner	Art Unit	
	John J. Wilson	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-16 is/are allowed.
- 6) ☒ Claim(s) 3-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3, 4, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (3792530). Smith shows a hand held device 1, nozzle 5, means for conveying 6, handle as shown and a generator 8, which can be a sound generator, column 8, lines 5-7. The generator 8 is connected to the nozzle through the hand piece and through plunger 6 and will inherently vibrate the nozzle, and the nozzle is inherently capable of functioning to transmit the vibrations to a filling compound flowing through the nozzle when used in that manner. Further Smith teaches that the generator can oscillate while filling, see column 6, lines 30-44. All of the claimed structure being shown, the use with a synthetic resin is given no patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955). Hirdes shows a supply container 5, nozzle 10, 11, means for conveying 3, handle 2, ultra sound generator 50, column 4, lines 60-67 and actuating button 6. The oscillator 50 will inherently set the nozzle into oscillation. All of the claimed structure being shown, to use with for filling a synthetic resin is an obvious matter of intended use of a known structure to one of ordinary skill in the art.

Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (3792530) in view of Nielsen (3890713). Smith shows the structure as described above, however, does not show an exchangeable supply container. Nielsen shows an exchangeable supply container and nozzle, see Figs. 7-9. It would be obvious to one of ordinary skill in the art to modify Smith to include an exchangeable container as shown by Nielsen in order to more conveniently refill the handpiece. As to claim 8, Smith does not show the use of a pneumatically excited oscillator. Nielsen shows creating vibrations with a pneumatic oscillator, column 2, lines 62-64. It would be obvious to one of ordinary skill in the art to modify Smith to include the use of a pneumatic oscillator as shown by Nielsen in order to make use of art known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (3792530) in view of Werly (5007837). Smith shows the structure as described above, however, does not show the use of a piezoelectric oscillator. Werly shows creating vibrations with a piezoelectric

oscillator 41. It would be obvious to one of ordinary skill in the art to modify Smith to include the use of a piezoelectric oscillator as shown by Werly in order to make use of art known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (3792530) in view of Balamuth et al (3809977). Smith shows the structure as described above, however, does not show the use of a magetostriuctive oscillator. Balamuth shows creating vibrations with a magetostriuctive oscillator, column 7, lines 28-34. It would be obvious to one of ordinary skill in the art to modify Smith to include the use of a magetostriuctive oscillator as shown by Balamuth in order to make use of art known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (3792530) in view of Fishburne, Jr. (5839895). Smith shows the structure as described above, however, does not show the use of a spray gun. Fishburne teaches that the structure produces a spray, column 5, lines 1-5. It would be obvious to one of ordinary skill in the art to modify Smith to include producing a spay as shown by Fishburne in order to make use of known properties of art known delivery devices. It is further noted that the present disclosure does not specify any specific type of spray gun, therefore, to call the above combination a spray gun is an obvious matter of choice to the skilled artisan.

Allowable Subject Matter

Claims 14-16 are allowed.

Response to Arguments

Applicant's arguments filed January 4, 2005 have been fully considered but they are not persuasive. With respect to Smith, applicant's argument that Smith does not vibrate while the filling material is conveyed is not agreed with because in column 6, lines 30-35, Smith teaches the step of moving the plunger forward to push out the filling material and further states that vibrator 8 is on and operative during the whole of this step, column 6, lines 36-38. With respect to Hirdes, the argument that the vibrator cannot function while the filling material is being transmitted is not commensurate with the claim language of claims 9 and 12.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

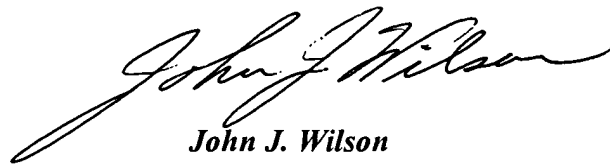
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722). The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached at 571-272-4720). The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John J. Wilson
Primary Examiner
Art Unit 3732

jjw
February 11, 2005